



[4910-06P]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 27, Notice No. 1]

Gulf, Colorado & San Saba Railway;

Emergency Order to Prevent Operation of Trains over the Highway-Rail Grade Crossing at U.S. Highway 87 (DOT Crossing No. 024816B, Milepost 66.65) in Brady, TX

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order requiring the Gulf, Colorado & San Saba Railway (GCSR) of Brady, Texas, to discontinue operation of any train or rail vehicle under any circumstances over the highway-rail grade crossing at U.S. Highway 87 (DOT Crossing No. 024816B, milepost 66.65) on the GCSR rail line until GCSR implements and complies with procedures for safe operation over the crossing as approved by FRA, or restores the proper functioning of the grade crossing warning system at U.S. Highway 87 and brings the grade crossing warning system into full compliance with FRA regulations, as determined by FRA.

Authority

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws, 49 U.S.C. 20102, 20103. FRA is authorized to issue emergency orders where an unsafe

condition or practice “causes an emergency situation involving a hazard of death or personal injury.” 49 U.S.C. 20104. These orders may impose such “restrictions and prohibitions . . . that may be necessary to abate the situation.” Ibid.

Background

GCSR is subject to the jurisdiction of FRA. The railroad operates on 67.5 miles of main line track between Lometa, Texas, and Brady, Texas. In addition to its main line track, GCSR operates on the Sand House Spur in Brady, which is approximately two miles in length. The American Railroads Corporation, headquartered in Barrington, Illinois, owns and operates GCSR. The railroad solely transports freight, and its primary commodities include sand and agricultural products. GCSR has designated all track over which it operates as excepted track. See 49 CFR 213.4. By regulation and posted notice, train speeds are restricted to 10 m.p.h. This includes the trackage over the highway-rail grade crossing at U.S. Highway 87. However, even trains traveling through a grade crossing at slow speeds are not able to stop suddenly to avoid vehicles in the crossing. FRA has promulgated regulations to protect and adequately warn highway users attempting to cross a grade crossing about a train’s approach to, or occupancy of, the crossing so that a potentially deadly accident can be prevented. See 49 CFR part 234.

U.S. Highway 87 is a busy four-lane highway in Brady, which GCSR has acknowledged in a June 4, 2012, letter to FRA’s Regional Administrator for Region 5. The posted highway speed limit is 55 m.p.h. As of 2010, the annual average daily traffic was approximately 4,200 vehicles. Moreover, the Texas Department of Transportation (TXDOT) estimates that approximately 16 school buses currently traverse the crossing daily, Monday through Friday. The track adjacent to U.S. Highway 87 is routinely used

to service a nearby industry. During an inspection in April 2012, FRA inspectors found freight cars “spotted” on the industry track immediately on both sides of the crossing that either did not have handbrakes applied or had insufficient handbrakes applied to prevent them from rolling free.

The active warning system for the highway-rail grade crossing at U.S. Highway 87 consists of mast-mounted flashing lights and audible warning bells. According to the information available to FRA, the active warning system at U.S. Highway 87 has been without power and out-of-service since at least April 1, 2010. In GCSR’s June 4th letter, the railroad contends that the crossing has been out-of-service since the railroad was purchased by the current owners, and that the line was rarely used. Only in the last 24 months, according to GCSR, has business expanded requiring the regular use of the U.S. Highway 87 grade crossing.

Federal grade crossing signal system safety regulations require that “[w]hen any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component adjusted, repaired, or replaced without undue delay.” 49 CFR 234.207(a). Further, the railroad must take appropriate action, such as stopping and flagging the crossing, until the repair of an essential component has been made. 49 CFR 234.207(b).

FRA and TXDOT safety inspectors have taken exception several times to the condition of the active warning system at the U.S. Highway 87 grade crossing. However, GCSR has repeatedly failed to institute necessary repairs to restore the proper functioning of the active warning system. On July 6, 2011, a TXDOT inspector cited GCSR for its failure to repair the warning system without undue delay. On January 25, 2012, FRA and

TXDOT conducted a re-inspection and again cited GCSR for its failure to repair the warning system without undue delay. At this time, GCSR representatives were provided a detailed explanation of the requirements of the Federal regulations. Yet, follow-up inspections by FRA on March 20 and April 17, 2012, revealed that nothing had been done to bring the active warning system back into proper functioning.

On May 21, 2012, FRA sent a letter to GCSR notifying the railroad of the need to restore the active warning devices at the U.S. Highway 87 highway-rail grade crossing as well as those at a separate crossing (FM 3533) to proper functioning within 10 days of the date of the letter. FRA clearly stated that failure to act within the time prescribed would result in the issuance of an emergency order ceasing operations over the identified crossings because of the serious safety concerns about the condition of the crossing warning systems. GCSR failed to respond within the time prescribed, but did respond by letter dated June 4, 2012. GCSR noted that the crossing at FM 3533 had been repaired prior to the receipt of FRA's May 21st letter, but the railroad recognized that it had failed to restore the active warning system to its proper functioning at the U.S. Highway 87 highway-rail grade crossing. GCSR contended that it has not restored the warning system to proper functioning at U.S. Highway 87 because it has been waiting for TXDOT to approve a crossing upgrade. The railroad also stated that it has used safe flagging procedures with crews on the ground facing traffic in both directions. Although GCSR states that it has stop and flag procedures in place, TXDOT has received multiple reports concerning GCSR trains passing through the crossing at U.S. Highway 87 without flagmen present. While FRA understands the desire to upgrade the crossing, this circumstance cannot prevent GCSR from taking the necessary steps to protect its

employees and the general public from the serious hazards created by the out-of-service active warning systems at the U.S. Highway 87 grade crossing. As of June 5, 2012, FRA confirmed that still nothing has been done to bring the active warning system back into proper functioning.

Finding and Order

The results of inspections performed by FRA and TXDOT inspectors of the active warning devices installed at the U.S. Highway 87 grade crossing at milepost 66.65 on GCSR line have led FRA to conclude that continued use of this highway-rail grade crossing by the railroad poses an imminent and unacceptable threat to public safety. Furthermore, a past pattern of failure by GCSR to comply with Federal grade crossing signal system safety regulations persuades FRA that reliance upon the cooperation of GCSR to provide alternate protection for highway users until completion of an anticipated upgrade to the active warning devices at the U.S. Highway 87 grade crossing is inadequate to protect public safety. I, therefore, find that the unsafe conditions discussed above create an emergency situation involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of 49 U.S.C. 20104, delegated to me by the Secretary of Transportation (49 CFR 1.49), it is ordered that Gulf, Colorado & San Saba Railway shall discontinue, and shall not permit under any circumstances, the operation of trains over the U.S. Highway 87 grade crossing (DOT Crossing No. 024816B) at milepost 66.65 while this Emergency Order remains in effect. I direct that a copy of this order be posted in a public location at the railroad's office and a copy of the order be provided to each employee of the railroad.

Relief

The GCSR may obtain full relief from this Emergency Order by taking the following actions:

(1) Restore to their proper function the active warning devices currently installed, or complete installation of upgraded active warning devices, at the U.S.

Highway 87 grade crossing at milepost 66.65 to ensure proper functioning of such devices as they are relied upon by highway users.

(2) Submit written certification to FRA's Regional Administrator for Region 5 that all necessary repairs and inspections of the active warning devices at the U.S.

Highway 87 grade crossing have been performed and that all required tests are up-to-date.

(3) Obtain approval from the Federal Railroad Administrator that all of the requirements of this Emergency Order have been met and properly performed. To obtain relief, GCSR should inform the Federal Railroad Administrator in writing, with a copy to FRA's Regional Administrator for Region 5, that it believes all of the requirements of this Emergency Order have been met. FRA will conduct inspections of the active warning devices at the U.S. Highway 87 grade crossing and will inform GCSR in writing whether this Emergency Order will be lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to meet all of the requirements of this Emergency Order.

Partial Relief

In order for FRA to consider granting partial relief from this Emergency Order, the GCSR must submit a written plan for approval to FRA's Regional Administrator for

Region 5 to provide alternate protection for highway users at the U.S. Highway 87 grade crossing. GCSR shall not resume any rail operations over U.S. Highway 87 until obtaining approval of its written plan to provide temporary alternate protection to highway users of the U.S. Highway 87 grade crossing by the Regional Administrator for FRA's Region 5. Any partial relief provided will, however, remain subject to GCSR compliance with its approved written plan to provide alternate protection to highway users of the U.S. Highway 87 grade crossing. Failure to comply with any approved plan will result in the partial relief being revoked.

Penalties

Any violation of this order or the terms of any approved written plan pursuant to this order to provide alternate protection to highway users of the U.S. Highway 87 grade crossing shall subject the person committing the violation to a civil penalty of up to \$100,000 before June 25, 2012, and \$105,000 on or after June 25, 2012. 49 U.S.C. 21301. Any individual who willfully violates a prohibition stated in this order is subject to civil penalties under 49 U.S.C. 21301. In addition, such an individual whose violation of this order demonstrates the individual's unfitness for safety-sensitive service may be removed from safety-sensitive service on the railroad under 49 U.S.C. 20111. If appropriate, FRA may pursue criminal penalties under 49 U.S.C. 522(a) and 49 U.S.C. 21311(a), as well as 18 U.S.C. 1001, for the knowing and willful falsification of a report required by this order. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 49 U.S.C. 20112.

Effective Date and Notice to Affected Persons

This Emergency Order shall take effect at 12:01 a.m. C.S.T. on June 7, 2012, and apply to all operations of trains or vehicles on or after that time. Notice of this Emergency Order will be provided by publishing it in the Federal Register. Copies of this Emergency Order will be sent by mail or e-mail prior to publication to the Gulf, Colorado & San Saba Railway and the American Railroads Corporation.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with 49 U.S.C. 20104(b) and section 554 of title 5 of the United States Code. Administrative procedures governing such review are found at 49 CFR part 211. See 49 CFR 211.47, 211.71, 211.73, 211.75, and 211.77.

Issued in Washington, D.C. on _June 6, 2012.

Joseph C. Szabo,
Administrator.

[FR Doc. 2012-14239 Filed 06/07/2012 at 4:15 pm; Publication Date:
06/12/2012]